IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 371 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PURSHOTTAM ZINABHAI HARIJAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 371 of 1990

MR DR BHATT for Petitioner No. 1

MR BD DESAI Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/04/2002

ORAL JUDGEMENT

Heard learned counsel for the petitioner Mr DR Bhatt and learned APP Mr BD Desai for the respondent-State.

Considering the concurrent finding of facts, Mr.

Bhatt has not pressed the basic finding recorded qua the rash and negligent driving of the petitioner and has conceded that the trial court as well as the Ld. Sessions Judge while confirming the judgment of the trial court has not committed any error in holding that the petitioner was guilty for the offence for which he has been convicted. However, the grievance of Mr. Bhatt is that looking to the entire incident and some contribution in the occurrence of the incident of the child who died in the accident ought to have been considered and the harsh punishment of six months should not have been imposed. He has pointed out that in some cases, considering the totality of facts and circumstances, the courts have granted benefits of probation and some of the decisions which has been said that in the offence punishable under sec. 304-A benefit of Probation of Offenders Act normally should not be granted. Mr. Bhatt has submitted that the amount of fine has been paid by the petitioner. The accident in question has incurred in the year 1985 and the same was conducted expeditiously and he was held guilty on 2.12.1986. The appeal preferred by the petitioner was ultimately decided in the year 1990 approximately after 5 years from the date of accident. The petitioner is belongs to Socially and economically backward class. He is a member of Schedule Castes family and was of only 21 years of age when the accident occurred. Ld. Trial Judge ought to have considered this aspect and the size of the vehicle driven by the petitioner at the relevant point of time. So, according to Mr. Bhatt if the substantive sentence is reduced to three months, it would meet with the ends of justice.

The petitioner is undergoing a mental agony as he has been arrested because of the non-bailable warrant issued and was enlarged on bail on earlier occasion as per orders passed by this Court. So, the real punishment has been inflicted.

Mr. BD Desai learned APP after going through the totality of facts and circumstances has shown his agreement that this is a case wherein the substantive sentence can be reduced and it may be appropriately reduced.

So, this revision application is partly allowed in view of the above stated facts and circumstances of the case. The order of conviction and sentence passed by the Ld. J.M.F.C., Manavadar in Criminal Case No. 83/1985 and confirmed by the Ld. Sessions Judge, Junagadh in Criminal Appeal No. 62/1986 is hereby

modified accordingly i.e. the substantive sentenced is reduced to three months. Rule made absolute to the aforesaid extent only. DS permitted.

(C.K. BUCH, J.)
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